

CARLOS RIVERA,	:	
ANTHONY YOUNG,	:	
JOHN DOE, by and through his	:	
next friend, Jane Doe,	:	
BENJAMIN FUENTES, and	:	
EDWARD SOUTHWICK,	:	
	:	
Plaintiffs	:	
	:	SUPERIOR COURT
v.	:	
	:	JUDICIAL DISTRICT OF
	:	HARTFORD/NEW BRITAIN AT
JOHN ROWLAND, Governor, State of	:	HARTFORD
Connecticut, in his official	:	
capacity,	:	JANUARY 5, 1995
	:	
PUBLIC DEFENDER SERVICES	:	
COMMISSION	:	
	:	
ERNEST TEITELL, Chairman,	:	
RICHARD P. GILARDI,	:	
HONORABLE CURTISSA COFIELD,	:	
HONORABLE SAMUEL S. FREEDMAN,	:	
MICHAEL WHELTON, REVEREND	:	
MONSIGNOR WILLIAM A. GENUARIO,	:	
and PETER CIMINI,	:	
Members of the Public Defender	:	
Services Commission, in their	:	
official capacities	:	
	:	
Defendants	:	
_____	:	

CLASS ACTION COMPLAINT

I. INTRODUCTION

Plaintiffs bring this lawsuit to address a system of legal representation for indigent criminal defendants that is in crisis. While the caseload for public defenders in Connecticut has increased dramatically over the past ten years, there has

been no corresponding increase in the number of public defenders, investigators, or support staff. As a result, the plaintiff class of indigent criminal defendants awaiting trial in the Geographic Areas (G.A.), Judicial Districts (J.D.), and juvenile courts are represented by attorneys from public defender offices that have overwhelming caseloads and inadequate resources, preventing the plaintiff class from receiving their right to a constitutionally adequate level of representation. Plaintiffs allege that such conditions violate their rights under the Sixth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983, Article First, §§1, 8, 10, 12 and 20 of the Connecticut Constitution, and C.G.S. §51-289 *et seq.* Plaintiffs seek preliminary and permanent injunctive relief to stop such practices.

II. PARTIES

Plaintiffs

1. Plaintiff Carlos Rivera is and at all times pertinent herein has been a citizen of the United States and resident of Hartford, Connecticut. He has pending criminal cases in the Superior Court, G.A. 14 and is incarcerated at the Hartford Community Correctional Center. Plaintiff Rivera is represented by the public defender's office in Hartford.

2. Plaintiff Anthony Young is and at all times pertinent herein has been a citizen of the United States and resident of East Haven, Connecticut. He has pending criminal cases in the Superior Court, G.A. 8, in New Haven. Plaintiff Young is represented by the public defender's office in New Haven.

3. Plaintiff John Doe is and at all time pertinent herein has been a citizen of the United States and a resident of Middletown, Connecticut. He has a pending petition in the Juvenile Court and has criminal cases pending in the Superior Court, G.A. for which he has been granted youthful offender status. He is represented by a special public defender. He brings this case under a fictitious name to protect his privacy, and through his next friend, his mother, Jane Doe.

4. Plaintiff Benjamin Fuentes is a citizen of the United States and resident of East Hartford, Connecticut. He has criminal cases pending against him in the Superior Court, G.A. 14, in Hartford Connecticut. Plaintiff Fuentes is represented by the public defender's office in Hartford.

5. Plaintiff Edward Southwick is and at all times pertinent herein has been a citizen of the United States and is a former resident of Fairfield, Connecticut. He has pending criminal cases in the Superior Court, Judicial District in Bridgeport and

is incarcerated at the Bridgeport Correctional Center. Plaintiff Southwick is represented by the public defender's office.

Defendants

6. Defendant John Rowland is Governor of the State of Connecticut. Defendant Rowland is charged with responsibility for protection of the rights of the citizens of the state and is required to prepare a budget for the State and to enforce the laws and uphold the constitutions of the United States and of the State of Connecticut. Defendant Rowland, pursuant to C.G.S. §51-289(a), appoints the Chairman of the Public Defender Services Commission. Defendant Rowland is sued in his official capacity.

7. Defendant Public Defender Services Commission is charged with carrying out the purposes and requirements of the public defender statute, C.G.S. §51-289 et seq., including the requirement that, pursuant to C.G.S. §51-293, the Commission appoint "as many assistant...and deputy assistant public defenders for the superior court as the criminal or delinquency business of the court may require."

8. Defendants Ernest Teitell, Chairman, Richard P. Gilardi, Honorable Curtissa Cofield, Honorable Samuel S. Freedman, Michael Whelton, Reverend Monsignor William A. Genuario, and Peter Cimini, are and at all times pertinent hereto have been duly

appointed members of the Public Defender Services Commission and, pursuant to C.G.S. §51-289 et seq., are charged with carrying out the purposes and requirements of the public defender statute, including determination of the budgetary needs of the agency. They are sued in their official capacities.

III. CLASS ACTION ALLEGATIONS

9. This action is brought as a class action pursuant to Practice Book §§87-90.

10. Plaintiffs file this complaint on behalf of themselves and all others similarly situated who are or will in the future be adversely affected by the unconstitutional practices of the indigent criminal defense system in Connecticut, and who seek equitable relief for the unlawful and unconstitutional acts of defendants in failing to adequately fund public defender services in the State of Connecticut.

11. Named plaintiffs Rivera, Young, Doe, Fuentes, and Southwick are indigent criminal defendants awaiting trial in the Geographic Area, Judicial Districts, and Juvenile Courts.

12. The class plaintiffs seek to represent is composed of all indigent persons who are or will be represented by public defenders or special public defenders in the Geographic Area

(G.A.) courts, Judicial Districts (J.D.), Juvenile Courts, or in criminal habeas proceedings.

13. The class is so numerous that joinder of all members is impracticable.

14. There are questions of law and fact common to the members of plaintiff class in that:

a. All members of the class are or will be deprived of rights guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. §1983, Article First, §§1, 8, 10, 12, and 20 of the Connecticut Constitution, and C.G.S. §51-289 et seq.

b. The claims of the named plaintiffs are representative of the claims presented by the class as a whole.

c. All members of the plaintiff class seek injunctive relief to prevent future violations of their statutory and constitutional rights.

15. The claims of the representative parties are typical of the claims of the class in that the constitutional and statutory deprivations caused by defendants and claimed by the named plaintiffs are the same as for all other members of the class and predominate over individual claims.

16. The representative parties will fairly and adequately protect the interests of the class. The named plaintiffs have no interests antagonistic to the class. Further, all plaintiffs are represented by attorneys experienced in federal and state constitutional litigation.

17. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class.

18. Defendants have consistently acted and refused to act on grounds generally applicable to the class. Thus, final injunctive relief with respect to the class as a whole will be appropriate.

IV. STATEMENT OF FACTS

19. Pursuant to C.G.S. §51-289(g), the defendant Public Defender Services Commission has been designated to carry out the purposes of the public defender statutes, C.G.S. §51-289 et seq. It consists of seven members, two of whom are appointed by the Chief Justice of the Connecticut Supreme Court, four of whom are appointed by the Speaker of the House, President Pro Tempore of the Senate, Minority Leader of the House and Minority Leader of

the Senate, respectively, and one of whom, the Chairman, is appointed by the Governor. The defendant Commission not only appoints all attorneys and other employees of the Division of Public Defender Services, but it is authorized to establish a compensation plan for the Division and make personnel and other rules relating to the Division's operation.

20. Pursuant to C.G.S. §51-297(f), public defender services are provided to "indigent" accused persons in thirty-three public defender offices throughout the state.

21. Only 148 full-time lawyers and one part-time lawyer are currently authorized by the Commission to represent all indigent criminal defendants, juveniles, and those filing habeas corpus cases and appeals. These attorneys are supplemented by forty-eight full-time and two part-time investigators, sixteen social workers, fifty-six full-time and four part-time clerical, one paralegal, and eleven administrative staff.

22. The state public defender system fails to provide effective representation as set out in the ABA Standards for Criminal Justice, Chapter 5; the National Advisory Commission on Criminal Justice Standards and Goals; and other professional standards governing the provision of criminal defense services.

A. CASELOADS

23. During 1993-94, the numbers of cases handled by the Public Defender's office included 88,000 G.A. cases, 4,400 J.D. cases, and 5,000 juvenile cases.

24. Connecticut's public defender caseloads far exceed those set by national standards. For example, the National Advisory Commission on Criminal Justice Standards and Goals recommend maximum yearly case assignments which should not exceed 150 felonies per attorney per year, 400 misdemeanors per attorney per year, 200 juvenile cases per attorney per year, or 25 appeals per attorney per year.

25. Caseloads for public defenders in G.A. courts are at crisis proportions, now averaging 1,045 cases in the G.A. courts per year per attorney, ranging up to 1,200-1,400 cases per year per attorney in the most congested courts. In one court, the caseload was 1,483 cases per attorney for the year 1993-94.

26. Caseloads for public defenders in juvenile courts are similarly unmanageable, averaging 716 cases per year per attorney in 1993-94, ranging up to 1,571 cases per year in the most congested court.

27. In at least three J.D. courts, caseloads exceed 150 felonies per attorney. In one J.D. in 1993-94, the average caseload was 271 cases. The increased seriousness of the J.D.

caseload within the last several years, particularly in the urban courts, including an increased number of violent cases, homicides, serious drug-related cases, child sexual abuse cases, and mandatory minimum sentences, have made many J.D. caseloads untenable.

28. Many public defenders assigned to handle misdemeanors and felonies are now required to handle an overflow of appeals in addition to their regular caseload, further hampering their ability to provide adequate representation to their already existing clients.

29. Those public defenders now assigned to the increased number of capital cases also have the pressure of continuing to carry non-capital cases on their caseloads.

30. Supervisors are assigned full caseloads because of the overload, leaving little time for supervision of less experienced attorneys.

31. Caseloads for public defenders in the habeas division are extremely heavy, contributing to delays faced by class members in adjudication of their claims.

32. Defendant Public Defender Commission has failed to establish any caseload or workload standards of its own to ensure

that plaintiffs and members of their class are afforded effective assistance of counsel.

33. Connecticut's public defender expenditures per case are far below national norms, even though the cost of doing business is higher in Connecticut than in other states.

34. A 1986 study by the Bureau of Justice Statistics, U.S. Department of Justice, found that Connecticut ranked 45th among 50 states and the District of Columbia, in average cost per case of \$138.00. Upon information and belief, Connecticut's per case expenditures have continued to be far below the national norm.

35. From 1984-85 to 1988-89, over a five year period, public defender caseloads grew 78% while public defender staff grew by only 24%. The caseload/staff ratio continues to be far below the number necessary to insure adequate representation.

B. SPECIAL PUBLIC DEFENDERS

36. In cases of conflict-of-interest, private lawyers are appointed as "special public defenders." In addition, private lawyers receive special public defender contracts from the Public Defender Services Commission to handle certain misdemeanor, felony, juvenile, habeas, and appeals cases.

37. The hourly rates paid to special public defenders are seriously inadequate and among the lowest in the entire country.

For felony cases, appointed special public defenders are paid only \$20.00/hour for out-of-court work and \$25.00/hour for in-court work, with the maximum daily limit for out-of-court work, \$120.00, and in-court work, \$150.00. For misdemeanors, special public defenders are paid \$35.00 per day for a court appearance.

38. Thirty-two lawyers on contract with the defendant Public Defender Services Commission are also among the lowest paid in the country with a rate of \$150.00 for a case prosecuted in Part B of the Superior Court (misdemeanors through Class D felonies) and \$325.00 for Class A through C felonies prosecuted in Part A of the Judicial District. In juvenile cases, the rate is \$150.00 per petition.

39. Because of these unreasonable low hourly fees and inflexible caps, experienced criminal lawyers are discouraged from taking cases. Attorneys who handle cases as special public defenders expend funds out-of-pocket without full reimbursement, which increases the burden on indigent criminal defense counsel and effectively creates a financial disincentive for special public defenders to provide thorough and effective defense services consistent with minimum standards of representation. The failure to provide adequately for essential investigative

resources as well as other defense-related expenses imposes a further substantial burden on special public defenders.

40. Inadequacy of funding available for special public defenders also causes an inconsistency among the public defender offices in the application of the conflict of interest policy. Some offices allow public defenders to represent co-defendants and appoint special public defenders when an "actual" conflict arises. Other offices appoint special public defenders immediately in co-defendant cases.

41. There are no objective standards for selection, training or supervision of special public defenders.

C. SUPPLEMENTAL RESOURCES

42. The defendant Public Defender Services Commission employs only fifty investigators statewide to serve the caseloads for all public defenders and "special" public defenders, severely limiting the ability of defendants to receive adequate investigative services and causing a backlog of criminal cases.

43. Defendant Commission has failed to adequately implement an effective recruitment, hiring, monitoring and evaluation system for investigators, causing an inconsistent quality of investigators among all the offices. Because of the inadequacy

of some investigative services, some public defenders either forego investigation on their cases, or conduct such investigations themselves.

44. Only sixteen social workers are available for all public defender offices and special public defenders. The lack of adequate social work services impedes the ability of public defenders to adequately investigate and prepare pre and post dispositional alternatives for their clients.

45. There are insufficient funds for other support staff, expert witnesses, psychiatric examinations, and scientific tests.

46. Law library materials are inadequate. Furthermore, although the states' attorney's office has access to computerized research, the public defenders do not. Only the public defender's appellate office has access to a limited system.

47. Access to adequate office equipment is severely hampered. Many offices have an insufficient number of telephones and computers. Photocopiers are old and frequently break down.

48. While repeated studies have shown the need for increased computerization of public defender operations, only three of thirty-one field offices have access to the Judicial Information System (JIS). Very few offices have any formal case tracking system. There is no computer networking among public

defender offices or between field offices and the central administrative office or the central appellate office.

49. Although the Chief Public Defender in his Annual Report of 1993 acknowledged that there are "demonstrable efficiencies and economies that ought to be available through increased computerization...nothing significant can be done because the necessary funding for equipment, operating costs, support persons and materials is unavailable." (p. 12)

50. Funds and programs available for training are inadequate. Training opportunities have been limited as a result.

51. Because of their overwhelming caseloads, public defenders are unable to spend time reading the limited library materials received in their offices. Public defenders do not receive adequate training to keep current on the constantly changing status of criminal law.

D. OFFICE AND COURTROOM CONDITIONS

52. Office conditions at many public defender sites are deplorable, with inadequate office space even for the existing number of attorneys and their support staff.

53. In Bridgeport G.A. arraignment court, a fenced-in "cage" area is maintained where members of plaintiff class are

held shackled in a small area in the courtroom where they wait throughout all arraignments. This area affords no privacy for private attorney-client communications. Although such "cages" have been removed from other parts of the country due to the degrading and prejudicial nature of such conditions, defendants have taken no steps to eliminate these conditions.

54. Some courts also lack adequate and private facilities for interviewing clients, forcing public defenders to interview their clients inside the lock-up, on a bench inside or outside the courtroom, within listening range of other persons.

55. The public defender offices do not accept collect calls from their clients, impairing the ability of the plaintiffs and members of their class to communicate with their attorneys.

E. SCREENING OF CASES

56. The Commission promulgated Guidelines for Determining Financial Eligibility for Public Defender Services in October 1976 which were amended in 1993. Some offices follow the determinations of indigency set forth in this document, while others impose no standards at all.

57. Pursuant to these Guidelines, any indigent charged with a felony is entitled to be represented by a public defender; if charged with a misdemeanor, an indigent defendant is not entitled

to a public defender unless the disposition of the case may result in incarceration or probation.

58. Some offices collect fees from indigent incarcerated clients, violating the statutory reimbursement policy.

59. In at least one G.A., the public defender office requires accused misdemeanants to see the prosecutor, unaccompanied by counsel, before they are allowed to complete an application for public defender services.

60. In three G.A. courts, an early morning screening program has been instituted in such a manner as to place significant and undue pressure on public defenders to work out plea agreements prior to completing adequate interviews with their clients or investigating their cases.

F. HARMS TO PLAINTIFF CLASSES

61. The effects of these extreme caseloads and inadequate resources on the quality of legal representation are pervasive, and harm plaintiffs and members of their class at every stage of their criminal case. Public defenders are not able to spend adequate time interviewing their clients, counselling their clients, or even explaining the basic information to their clients about the upcoming court proceedings. Forced excessive caseloads and inadequate resources prevent public defenders from

spending adequate time reviewing each client's file, conducting necessary legal research, conducting necessary fact investigation and witness preparation, pursuing motions for speedy trials, preparing for trial, filing certain pretrial motions and exploring pretrial alternatives to incarceration as well as sentencing options.

62. Indigent criminal defense services function without regard for, and in violation of accepted minimum standards for training, workload, and resources including those promulgated by the American Bar Association, the National Study Commission on Defense Services, the National Legal Aid and Defender Association, and the National Advisory Commission on Criminal Justice Standards and Goals.

63. Excessive caseloads and inadequate resources have caused high stress, low staff morale, and burnout. Because the numbers of attorneys are insufficient, there are no mechanisms for relief when staff is overburdened.

64. Excessive caseloads have also caused mistrust among plaintiffs and members of their class regarding the adequacy of their public defenders. In part, because weeks or months go by without contact from their attorneys, many indigent criminal

defendants develop an understandable lack of confidence in the public defender's office.

65. According to the 1993 Annual Report of the Chief Public Defender, "the increasing difficulty public defenders are having in keeping up with the constantly excessive and serious caseloads," has caused a "slowdown in the public defender's ability to resolve cases expeditiously leading to increased court delays and exacerbating the prison overcrowding problem by prolonging the pretrial incarceration of accused persons who cannot make bail." (p. 7)

66. Overwhelming caseloads substantially contribute to the fact that virtually all cases "plead out." In the G.A.s, there were only 0.1% or 64 out of 55,767 of all cases disposed in FY 1992-93 in which a jury trial was initiated. For a similar period in the J.D. offices, in only 89 of 1,894 or 4.6% of all cases disposed was a jury trial initiated. In 1993-94, 0.1% or 59 out of 50,483 cases in the G.A. courts and 3.9% or 76 out of 1,903 cases in the J.D. courts began a jury trial.

67. Indigent criminal defendants in the state court system are not afforded criminal process and representation substantially similar to that afforded criminal defendants of means.

G. DEFENDANTS' LONG-STANDING KNOWLEDGE OF INADEQUATE SERVICES

68. Defendants have long been aware of the crisis in indigent criminal representation, but have failed to take the necessary steps to address the problems.

69. The Annual Reports of the Chief Public Defender from 1976 to the present consistently document the heavy caseloads and insufficient supportive personnel and facilities.

70. In 1991, the Commission to Study the Management of State Government (the "Thomas Commission") observed that "caseloads have risen dramatically", by 80%, in the G.A. courts between the 1984-85 and 1988-89 fiscal years, while the number of attorneys during that same time period had increased only 31%.

71. The Thomas Commission report, transmitted to defendant governor and members of the defendant Commission, further observed that the comparisons in the level of public defender services in Connecticut and other states "raise concerns about the ability of the Division of Public Defender Services to continue to provide constitutionally adequate representation to its ever-increasing numbers of clients," (p.32) and that "[c]urrent attorneys in the G.A. courts are so overloaded with

cases that representation of individual clients may be compromised..."(p.98).

72. In spite of the recommendations and warnings of the Thomas Commission, defendants failed to act appropriately to address the need for additional indigent defense resources.

73. From 1992 to the present, in annual budget submissions by the Chief Public Defender, in Annual Reports of the Chief Public Defender, and in testimony and memoranda from the chief public defender's office to the Governor's office, the Appropriations Committee and Judicial Appropriations Subcommittee of the Connecticut legislature, defendants have been warned repeatedly about the crisis in the caseloads and the harmful consequences of failing to increase public defender resources. Defendants have consistently failed, however, to take appropriate action to correct the deficiencies.

74. Plaintiffs and members of their class suffer immediate and irreparable injury for which there is no adequate remedy at law.

V. LEGAL CLAIMS

A. First Count: United States Constitution, Sixth and Fourteenth Amendments and 42 U.S.C. §1983

75. Paragraphs one through seventy-four are incorporated herein by reference the same as though pleaded in full.

76. Defendants' failure to provide for adequate indigent defense services infringes upon plaintiffs' right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

B. Second Count: United States Constitution, Fourteenth Amendment and 42 U.S.C. §1983

77. Paragraphs one through seventy-six are incorporated herein by reference the same as though pleaded in full.

78. Defendants' failure to provide the necessary indigent defense services to plaintiffs and members of their class constitutes a deprivation of plaintiffs' rights to due process and equal protection in violation of the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. §1983.

C. Third Count: Connecticut Constitution, Article First, Sections 8 and 10

79. Paragraphs one through seventy-eight are incorporated herein by reference the same as though pleaded in full.

80. Defendants' failure to adequately provide the necessary legal assistance and resources for indigent criminal defendants in the state's criminal justice system violates plaintiffs' rights under Article First, Sections 8 and 10 of the Connecticut Constitution.

D. Fourth Count: Connecticut Constitution, Article First, Sections 1 and 20

81. Paragraphs one through eighty are incorporated herein by reference the same as though pleaded in full.

82. The actions of defendants in invidiously discriminating against indigent criminal defendants violate plaintiffs' rights to equal protection as guaranteed by Article First, Sections 1 and 20 of the Connecticut Constitution.

E. Fifth Count: Connecticut Constitution, Article First, Section 12.

83. Paragraphs one through eighty-two are incorporated herein by reference the same as though pleaded in full.

84. By failing to provide the necessary indigent defense services in habeas corpus cases, defendants have violated the rights of plaintiffs and members of their class under Article First, Section 12 of the Connecticut Constitution which provides that "[t]he privileges of the writ of habeas corpus shall not be suspended, unless, when in case of rebellion or invasion, the

public safety may require it; nor in any case, but by the legislature."

F. Sixth Count: Connecticut General Statutes C.G.S. §51-289, et seq.

85. Paragraphs one through eighty-four are incorporated herein by reference the same as though pleaded in full.

86. By failing to provide an appropriate number of public defenders, investigators and other staff, defendants have violated plaintiffs' rights under C.G.S. §51-293(a)(1) which requires the Commission to appoint "as many assistant...and deputy assistant public defenders for the superior court as the criminal or delinquency business of the court may require."

87. By failing to provide adequate facilities for public defenders, assistant public defenders and deputy assistant public defenders in the various courts, defendants have violated plaintiffs' rights as guaranteed by C.G.S. §51-289(h).

G. Seventh Count: Connecticut General Statutes §51-296.

88. Paragraphs one through eighty-seven are incorporated herein by reference the same as though pleaded in full.

89. By failing to appoint a sufficient number of attorneys to represent indigent habeas petitioners, defendant commission has failed to provide plaintiffs and members of their class with

the effective assistance of counsel required by C.G.S. §51-296 which provides that "in any habeas corpus proceeding arising from a criminal matter...the court before which the matter is pending shall, if it determines...that defendant is indigent...designate a public defender, assistant public defender or deputy assistant public defender to represent such indigent defendant...."

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request this Court to grant the following relief:

1. Assume jurisdiction over this action;
2. Issue a preliminary and permanent injunction requiring defendants to provide a statewide indigent defense system which will protect plaintiffs' rights under the Sixth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983, Article First, §§1, 8, 10, 12, and 20 of the Connecticut Constitution, and C.G.S. §51-289 et seq., and include but not be limited to:
 - a. placing uniform and appropriate caseload/workload limitations for the appointment of counsel in all cases and directing defendants to increase the number of public defenders to meet caseload/workload standards;
 - b. promulgating and adopting appropriate uniform standards governing the representation of indigents;
 - c. providing an adequate rate of payment for special public defenders consistent with a constitutionally adequate quality of representation;

d. providing adequate investigative, expert, and support services to public defenders and special public defenders to meet their constitutional and statutory obligations;

e. providing adequate conditions in public defender offices, client interview areas, waiting rooms, libraries, and courtroom holding areas.

3. Award to plaintiffs costs and attorneys' fees under 42 U.S.C. §1988.

4. Grant such other and further relief as this Court deems necessary or proper.

Respectfully Submitted,

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